



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 19, and 52**

**[FAR Case 2020-013; Docket No. FAR-2021-0009, Sequence No. 1]**

**RIN 9000-AO17**

**Federal Acquisition Regulation: Certification of Women-Owned Small Businesses**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the final rule published by the Small Business Administration implementing a section of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year (FY) 2015.

**DATES:** Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2020-013 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2020-013". Select the link "Comment Now" that corresponds with "FAR Case 2020-013". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2020-013" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite "FAR Case 2020-013" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Malissa Jones, Procurement Analyst, at 703-605-2815, or by email at [Malissa.jones@gsa.gov](mailto:Malissa.jones@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAR Case 2020-013.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

DoD, GSA, and NASA are proposing to revise the FAR to implement section 825(a)(1) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (15 U.S.C. 637(m)), Pub. Law 113-291. Section 825 requires women-owned small business (WOSB) concerns and economically disadvantaged women-owned small business (EDWOSB) concerns to be certified by the Small Business Administration (SBA), a Federal agency, a State government, or a national certifying entity approved by SBA in the WOSB Program to be eligible for set-aside or sole-source awards.

SBA issued a final rule at 85 FR 27650, May 11, 2020, to implement section 825(a)(1). In their final rule, SBA amended 13 CFR part 127 requiring WOSB and EDWOSB concerns be certified by a Federal agency, a State government, the SBA, or a national certifying entity approved by SBA in order to be eligible under the WOSB Program for set-aside or sole-source awards.

## **II. Discussion and Analysis**

The proposed changes to the FAR and the rationale for the proposed changes are summarized in the following paragraphs.

Changes are proposed to FAR 2.101, Definitions, to update the definition of Economically disadvantaged women-owned small business concern (EDWOSB) and Women-owned small

business (WOSB) concern eligible under the WOSB Program to add that the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

Changes are proposed to FAR 19.308(d), *Protesting a firm's status as an EDWOSB concern or WOSB concern eligible under the WOSB Program*, to require a protest to be submitted by email to SBA at *wosbprotest@sba.gov*. FAR 19.308(d) is also amended to propose deletion of text requiring SBA to consider protests by contracting officers when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR 19.1503(c). Changes are also proposed to FAR 19.308 to add the requirement that the protest present evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women "who are United States citizens", based on the requirements of 13 CFR part 127. The addition of "United States citizens" aligns the FAR text with SBA's regulations.

FAR 19.1501, *Definition*, is reserved to delete the definition of WOSB Program Repository since the WOSB Program Repository is no longer the source for WOSB program eligibility as of October 15, 2020.

FAR 19.1503, *Status*, is amended to add the requirement for the contracting officer to verify the designation as a certified WOSB or EDWOSB small business in the Dynamic Small Business Search (DSBS) at

*net/search/dsp\_dsbs.cfm*. The designation will also appear in the System for Award Management (SAM) after issuance of the final rule. Paragraphs (c) and (d) at FAR 19.1503, are proposed to be deleted. Paragraphs (e) and (f) at FAR 19.1503 are redesignated as new paragraphs (c) and (d).

FAR 19.1504, Exclusions, is amended at paragraph (b) to replace Federal Prison Industries, Inc., and AbilityOne with "mandatory Government sources (see section 8.002)", since both entities are referenced at FAR 8.002, Priorities for use of mandatory Government sources.

FAR 19.1505, Set-aside procedures, is amended to allow an offeror to submit an offer while awaiting certification under the WOSB Program. FAR 19.1505 is also amended to provide the contracting officer with guidance if an apparent successful offeror's certification is pending under the WOSB Program. The contracting officer, prior to award, shall verify the apparently successful offeror is certified in SAM or DSBS. If the apparently successful offeror's EDWOSB or WOSB certification is pending in DSBS, the contracting officer shall notify SBA's Director/Government Contracting by email at *WOSBpendingcertification@sba.gov*, and request SBA's eligibility determination.

Within 15 days from the date of the contracting officer's notification, SBA will make a determination regarding the offeror's status as an EDWOSB or WOSB

eligible under the WOSB program.

If the contracting officer does not receive a determination from SBA within 15 days, the contracting officer, at their discretion, may provide SBA additional time to make a determination, or may proceed with award to the next highest evaluated offeror. The contracting officer shall not make award to an offeror who is not a certified EDWOSB or WOSB concern eligible under the WOSB program.

FAR 19.1506, Women-Owned Small Business Program sole-source awards, is amended to instruct a contracting officer that a sole-source award can only be made to a concern that has been certified pursuant to 13 CFR 127.300 as an EDWOSB or WOSB eligible under the WOSB Program. FAR 19.1506 is also amended to notify contracting officers that they shall not request an eligibility determination from SBA on pending certification applications for EDWOSB or WOSB sole-source awards.

Changes are proposed to FAR provision 52.212-3, Offeror Representations and Certifications-Commercial Items, to remove the representation for WOSB concerns and EDWOSB concerns eligible under the WOSB Program. This rulemaking also proposes to update the WOSB and EDWOSB joint venture provisions and clauses.

FAR clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—

Commercial Items, was also revised to make conforming changes.

Changes are proposed to FAR provision 52.219-1, Small Business Program Representations, to remove the representation for WOSB concerns and EDWOSB concerns eligible under the WOSB Program. This section also proposes to update the WOSB and EDWOSB joint venture provisions and clauses.

Changes are proposed to FAR clause 52.219-28, Post-Award Small Business Program Rerepresentation, to remove the rerepresentation for WOSB concerns and EDWOSB concerns eligible under the WOSB Program. This rulemaking also proposes to update the WOSB concern and EDWOSB concern joint venture clauses.

Changes are proposed to FAR clause 52.219-29, Notice of Set-aside for, or Sole-Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, to delete the definition of WOSB Program Repository from the clause and to require that the EDWOSB concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300 as an EDWOSB. This section also proposes to delete text in the clause that the contracting officer will ensure the successful offeror has provided all required documents to the now defunct WOSB Program Repository. It adds text for EDWOSB set-aside procurements that offers are solicited only from certified EDWOSB

concerns or concerns with a pending certification application in DSBS. This section also proposes to add text that for EDWOSB sole-source awards, offers are solicited only from certified EDWOSB concerns.

Changes are proposed to FAR clause 52.219-30, Notice of Set-aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, to delete the definition of the now defunct WOSB Program Repository text from the clause. This rulemaking proposes to amend the clause to also add to the definition of WOSB concern eligible under the WOSB Program that the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300 as a WOSB. This rulemaking also proposes to delete text in the clause that the contracting officer will ensure the successful offeror has provided all required documents to the WOSB Program Repository. This rulemaking also proposes to amend the clause to add that offers are solicited only from certified WOSB concerns or concerns with a pending certification application in DSBS for WOSB set-aside procurements. This rulemaking further proposes to amend the clause to add, for WOSB sole-source awards, that offers are solicited only from certified WOSB concerns.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**



This proposed rule amends the following provisions and clauses: provision 52.212-3, clause 52.212-5, provision 52.219-1, clause 52.219-28, clause 52.219-29, clause 52.219-30. However, this proposed rule does not impose any new requirements on contracts at or below the SAT or for commercial items, including COTS items. The provisions and clauses continue to apply to acquisitions at or below the SAT and to acquisitions for commercial items, including COTS items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial items. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items.

#### C. Determinations

The purpose of this proposed rule is to implement section 825(a)(1) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 and SBA's implementing regulation. Section 825 requires women-owned small business concerns and

economically disadvantaged women-owned small business concerns to be certified to be eligible under the WOSB Program for set-aside or sole-source awards (see 13 CFR 127.300).

Section 825 is silent on the applicability of these requirements for acquisitions at or below the SAT and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1905 and its application to acquisitions at or below the SAT. Therefore, it does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as provided at 41 U.S.C. 1905. Additionally, the law is silent on the applicability of this requirement to acquisitions of COTS items and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1907 and its application to acquisitions of COTS items. Therefore, it does not apply to acquisition of COTS items unless the Administrator for Federal Procurement Policy makes a written determination as provided at 41 U.S.C. 1907.

The law furthers the Administration's goal of simplifying the acquisition process and facilitating easier access to the Federal marketplace, in this case for women-owned small businesses and economically disadvantaged women-owned small businesses who make up an important

component of the Government's industrial base. Exclusion of a large segment of Federal contracting, such as acquisitions at or below the SAT, and for acquisitions of COTS items, will limit the full implementation of these objectives.

Further, the primary FAR provisions and clauses implementing the certification of women-owned small businesses and economically disadvantaged women-owned small businesses in the WOSB Program are currently prescribed for use in COTS items.

Exclusion of acquisitions for COTS items would create confusion among contractors and the Federal contracting workforce.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the proposed rule to acquisitions at or below the SAT and to acquisitions of COTS items.

#### **IV. Expected Impact of the Rule**

As a result of this proposed rule, contracting officers will be required to check SAM or DSBS to determine if an EDWOSB or WOSB concern is certified or has a pending application for certification in DSBS instead of checking that all required documentation has been submitted to the now defunct WOSB Repository. Additionally, for set-aside procurements contracting officers will have to contact SBA should the apparently successful offeror have a pending

application for certification. Within 15 days from the date of the contracting officer's notification, SBA will make a determination regarding the offeror's status as an EDWOSB or WOSB eligible under the WOSB program. If the contracting officer does not receive a determination from SBA within 15 days, the contracting officer at their discretion, may provide SBA additional time to make a determination, or may proceed with award to the next highest evaluated offeror. For EDWOSB or WOSB set-asides and sole-source awards, award can only be made to an EDWOSB or WOSB certified concern.

The changes in this proposed rule will affect internal Government operations, but not contractor operations. The required documentation (articles of incorporation, bylaws, stock ledgers or certificates, tax records, etc.) already exists. In addition, this information is already required to be provided either to third-party certifiers, governmental certifying entities, or to SBA through [certify.SBA.gov](https://certify.sba.gov). SBA expects WOSBs to see a reduction in burden because, under the prior WOSB Program Repository, SBA determined that the average time required to complete the process required by the WOSB Program Repository was two hours, whereas the use of the new certification process requires only one hour due to technological improvements.

The public cost associated with obtaining the WOSB or EDWOSB certification from SBA or a third-party certifier is

accounted for under the SBA final rule implementing the Program certification requirements (85 FR 27660). In addition, the SBA final rule advises concerns that only a certified WOSB or EDWOSB may seek a specific sole-source requirement under the Program and that only a certified WOSB or EDWOSB or a concern that has a pending application for certification under the Program may submit an offer on a specific EDWOSB or WOSB set-aside requirement.

Given SBA's notice to small business concerns, the cost to the public associated with the FAR implementation of the SBA final rule is de minimis and is limited to the cost of regulatory familiarization, or the cost associated with reading this rule and understanding the new solicitation provision.

## **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not

subject to review under section 6(b) of E.O. 12866,  
Regulatory Planning and Review, dated September 30, 1993.

## **VI. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This proposed rule is not anticipated to be a major rule under 5 U.S.C. 804.

## **VII. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a statutory requirement to certify Women-Owned Small Business Concerns (WOSBs) and Economically Disadvantaged Women-Owned Small Business Concerns (EDWOSBs) participating in the Procurement Program for Women-Owned Small Business Concerns (the Program). The certification requirement applies only to participants wishing to compete for set-aside or sole-source contracts under the Program. Once this rulemaking is effective, WOSBs and EDWOSBs that are not certified will not be eligible for contracts under the Program. Other WOSBs that do not participate in the Program may continue to self-certify their status, receive contract awards outside the Program, and count toward an agency's goal for awards to WOSBs.

The objective of this rulemaking is to implement section 825(a)(1) of the NDAA for Fiscal Year (FY) 2015, Pub. L. 113-291, which amended the Small Business Act to create a requirement that a concern be certified as a WOSB or EDWOSB by a Federal agency, a State government, the Small Business Administration (SBA), or a national certifying entity approved by SBA, in order to be awarded a set-aside or sole-source contract under the authority of section 8(m) of the Small Business Act. The legal basis for this rule is 15 U.S.C. 637(m)(2)(E).

This rulemaking will impact approximately 9,000-12,000 WOSBs. These businesses will have to apply to be certified as WOSBs or EDWOSBs to SBA or third-party certifiers in order to be eligible to be awarded any WOSB or EDWOSB set-aside contracts or sole-source awards under the WOSB program. However, SBA has minimized the impact on WOSBs by accepting certifications already conferred by SBA.

Data taken from FPDS-NG as of September 20, 2020, revealed that 7,198 awards were made to WOSB and EDWOSB contractors between FY 2017-2019. Of the 7,198 awards made, 553 or approximately 8% were WOSB and EDWOSB sole-source awards.

A further breakdown reveals that during FY 2017, a total of 3,150 awards were made to WOSB and EDWOSB contractors, with approximately 9 percent of these awards being sole-sourced. Of the 3,150 awards made, 244 were sole-sourced to WOSBs and 36 were sole-sourced to EDWOSBs.

During FY 2018, a total of 1,460 awards were made to WOSB and EDWOSB contractors, with approximately 17 percent of these awards being sole-sourced. Of the 1,460 awards made, 207 were sole-sourced to WOSBs and 42 were sole-sourced to EDWOSBs.

During FY 2019, a total of 2,588 awards were made to WOSB and EDWOSB, with approximately 9 percent of these awards being sole-sourced. Of the 2,588 awards made, 204 were sole-sourced to WOSBs and 20 were sole-sourced to EDWOSBs.

The costs to WOSBs for certification should be de minimis, because the required documentation (articles of incorporation, bylaws, stock ledgers or certificates, tax records, etc.) already exists. In addition, this information is already required to be provided either to third-party certifiers, governmental certifying entities, or to SBA through certify.gov. SBA expects WOSBs to see a reduction in burden because under the prior WOSB Program Repository, SBA determined that the average time required to complete the process required by the WOSB Program Repository was two hours, whereas the use of the new certification program requires only one hour due to technological improvements.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The Small Business Administration currently collects information to carry out its statutory mandate to provide oversight of certification related to SBA's WOSB Federal Contract Program. (OMB Control Number 3245-0374,



Certification for the Women-Owned Small Business Federal Contract Program). Additionally, third-party certifiers are required to provide SBA with quarterly reports that include the number of applications received, number of applications approved and denied, and other information that SBA determines may be helpful for ensuring that third-party certifiers are meeting their obligations or information or data that may be useful for improving the program.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches that would accomplish the stated objectives of the applicable statute.

Although this proposed rule may have a positive impact on small businesses, we do not expect it to have a significant economic impact on a substantial number of small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5 U.S.C. 610 (FAR case 2020-013) in correspondence.

#### **VIII. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

**List of Subjects in 48 CFR Parts 2, 19, and 52**

Government procurement.

**William F. Clark,**

*Director,*

*Office of Government-wide*

*Acquisition Policy,*

*Office of Acquisition Policy,*

*Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 19, and 52 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## **PART 2—DEFINITIONS OF WORDS AND TERMS**

2. In section 2.101, in paragraph (b)(2) amend the definition of "Women-Owned Small Business (WOSB) Program" by:

a. In paragraph (1), remove the phrase "sole source" and add the phrase "sole-source" in its place;

b. In paragraph (2), remove the phrase "13 CFR part 127" and add the phrase "13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300" in its place; and

c. In paragraph (3), remove the phrase "(13 CFR part 127)" and add the phrase ", and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300" in its place.

## **PART 19—SMALL BUSINESS PROGRAMS**

3. Amend section 19.308 by:

a. Removing from paragraph (d)(1)(ii) "women, when" and adding "women who are United States citizens, when" in its place;

b. Removing paragraph (d)(2);

- c. Redesignating paragraph (d) (3) as (d) (2);
- d. Removing from the newly designated paragraph (d) (2) "not a" and adding "not an" in its place;
- e. Revising paragraph (f) (1);
- f. Revising paragraphs (i) (3) (iii) and (i) (5) (iii);
- g. Removing from paragraph (1) (2) "409 Third Street SW., Washington, DC 20416, or facsimile 202-205-6390" and adding "by email at *wosbprotest@sba.gov*" in its place; and
- h. Removing from paragraph (1) (4) "facsimile 202-205-6873,".

The revisions read as follows:

**19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.**

\* \* \* \* \*

(f) (1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting by email at *wosbprotest@sba.gov*.

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \*

(iii) SBA will remove the concern's designation in the Dynamic Small Business Search (DSBS) as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern

shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

\* \* \* \* \*

(5) \* \* \*

(iii) SBA will remove the concern's designation in DSBS as an EDWOSB or WOSB concern eligible under the WOSB Program. The concern shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

\* \* \* \* \*

4. Amend section 19.1500 by revising paragraph (c) to read as follows:

**19.1500 General.**

\* \* \* \* \*

(c) An economically disadvantaged women-owned small business (EDWOSB) concern and a WOSB concern eligible under the WOSB Program are subcategories of "women-owned small business concern" as defined in section 2.101.

**19.1501 [Removed and Reserved]**

5. Remove and reserve section 19.1501.

6. Revise section 19.1503 to read as follows:

**19.1503 Status.**

(a) Status as an EDWOSB concern or WOSB concern eligible under the WOSB Program is determined by the Small Business Administration in accordance with 13 CFR part 127.

(b) For a WOSB that seeks a WOSB or EDWOSB set-aside or sole-source contract, the contracting officer shall verify that the offeror—

(1) Is registered in the System for Award Management (SAM); and

(2) Is designated as a certified EDWOSB or WOSB concern in the Dynamic Small Business Search (DSBS) at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm) (see 19.1505(d) for set aside procedures). DSBS will provide SBA's certification status to SAM.

(c) If there is a decision issued by SBA as a result of a current eligibility examination finding that the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the WOSB Program, the contracting officer may terminate the contract, and shall not exercise any option, or award further task or delivery orders. Agencies shall not count or include the award toward the small business goals for an EDWOSB concern or WOSB concern eligible under the WOSB Program and must update FPDS from the date of award to reflect the final SBA decision.

(d) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if the EDWOSB or WOSB participant is certified in DSBS (see

section 19.1505(d) for set aside procedures) and the joint venture meets the requirements of 13 CFR 127.506.

7. Amend section 19.1504 by revising paragraph (b) to read as follows:

**19.1504 Exclusions.**

\* \* \* \* \*

(b) Requirements that can be satisfied through award to mandatory Government sources (see section 8.002);

\* \* \* \* \*

8. Amend section 19.1505 by:

- a. Revising paragraph (a)(2);
- b. Redesignating paragraphs (f) and (g) as paragraphs (h) and (i);
- c. Redesignating paragraph (d) as paragraph (g);
- d. Adding paragraph (d);
- e. Revising paragraph (e);
- f. Adding paragraph (f); and
- g. Revising newly redesignated paragraph (i) introductory text and (i)(1).

The revisions read as follows:

**19.1505 Set-aside procedures.**

(a) \* \* \*

(2)(i) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns when the acquisition is assigned a NAICS

code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(ii) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to WOSB concerns eligible under the WOSB Program when the acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement, as specified on SBA's website at *<http://www.sba.gov/WOSB>*.

\* \* \* \* \*

(d) An offer is eligible for consideration under an EDWOSB or WOSB set-aside when the offeror—

(1) Qualifies as a small business concern under the size standard corresponding to the NAICS code assigned to the contract, and

(2)(i) For an EDWOSB set-aside, is certified pursuant to 13 CFR 127.300 as an EDWOSB or has a pending application for EDWOSB certification in the DSBS (see 13 CFR 127.504(a)), or

(ii) For a WOSB set-aside, is certified pursuant to 13 CFR 127.300 as an EDWOSB or WOSB, or has a pending application for EDWOSB or WOSB certification in the DSBS (see 13 CFR 127.504(a)).

(e) The contracting officer shall verify that offers received are eligible for consideration for award by checking to see if the EDWOSB or WOSB concern is designated



as a certified concern or has a pending application for certification in DSBS.

(1) If the offeror is designated as certified or has a pending application for certification, proceed with the offer evaluation.

(2) Unless the offeror is designated as certified or has a pending application for certification, the offer is not eligible for award and shall be removed from consideration.

(f) Prior to award, the contracting officer shall verify the apparently successful offeror is certified in DSBS. If the apparently successful offeror's EDWOSB or WOSB certification is pending, the contracting officer shall notify SBA's Director/Government Contracting by email at *WOSBpendingcertification@sba.gov*, and request SBA's status determination. The contracting officer shall provide SBA with the offeror's name, unique entity identifier, type of set-aside, NAICS code, and solicitation number.

(1) Within 15 calendar days from the date of the contracting officer's notification, SBA will make a determination regarding the offeror's status as an EDWOSB or WOSB eligible under the WOSB program.

(2) If the contracting officer does not receive a determination from SBA within 15 calendar days, the contracting officer at their discretion, may provide SBA

additional time to make a determination, or may proceed with award to the next highest evaluated offeror.

(3) The contracting officer shall not make award to an offeror who is not a certified EDWOSB or WOSB concern eligible under the WOSB program.

\* \* \* \* \*

(i) The SBA procurement center representative (PCR) may recommend use of the WOSB Program. If the contracting officer rejects a recommendation by SBA's PCR—

(1) The contracting officer shall notify the PCR as soon as practicable;

\* \* \* \* \*

9. Amend section 19.1506 by:

- a. Revising the section heading;
- b. In paragraphs (a) and (b) remove the phrase "sole source" and add the phrase "sole-source" in its place;
- c. Redesignating paragraph (d) as paragraph (e);
- d. Adding a new paragraph (d); and
- e. In newly redesignated paragraph (e), remove the phrase "sole source" and add the phrase "sole-source" in its place.

The revisions and addition read as follows:

**19.1506 Women-Owned Small Business Program sole-source awards.**

\* \* \* \* \*

(d) A contracting officer shall only award a sole-source contract to a concern that has been certified pursuant to 13 CFR 127.300 as an EDWOSB or WOSB eligible under the WOSB program. Contracting officers shall not request a status determination from SBA on pending certification applications for EDWOSB or WOSB sole-source awards.

\* \* \* \* \*

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

10. Amend section 52.212-3 by:

- a. Revising the date of the provision;
- b. In paragraph (a), revise the definition "Women-owned small business (WOSB) concern eligible under the WOSB Program"; and
- c. Revising paragraphs (c)(6) and (7);

The revisions read as follows:

### **52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (**DATE**)

\* \* \* \* \*

(a) \* \* \*

*Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the

management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

\* \* \* \* \*

(c) \* \* \*

(6) *WOSB joint venture eligible under the WOSB Program.* The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127. [*The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.*]

(7) *Economically disadvantaged women-owned small business (EDWOSB) joint venture.* The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.*]

\* \* \* \* \*

11. Amend section 52.212-5 by:

a. Revising the date of the clause;

b. In paragraph (b), remove "[Contracting Officer check as appropriate.]" and add "[*Contracting Officer check as appropriate.*]" in its place;

c. In paragraph (b)(23), remove "(SEP 2021)" and add "(**DATE**)" in its place; and

d. In paragraph (b)(24), remove "(SEP 2021)" and add "(**DATE**)" in its place.

The revision reads as follows:

**52.212-5 Contract Terms and Conditions Required To  
Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL ITEMS (**DATE**)

\* \* \* \* \*

12. Amend section 52.219-1 by:

a. Revising the date of the provision;

b. In paragraph (a), revise the definitions  
"Economically disadvantaged women-owned small business  
(EDWOSB) concern" and "Women-owned small business (WOSB)  
concern eligible under the WOSB Program"; and

c. Revising paragraphs (c)(4) and (5).

The revisions read as follows:

**52.219-1 Small Business Program Representations.**

\* \* \* \* \*

SMALL BUSINESS PROGRAM REPRESENTATIONS (**DATE**)

(a) \* \* \*

*Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

\* \* \* \* \*

*Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127) means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

\* \* \* \* \*

(c) \* \* \*

(4) *Women-owned small business (WOSB) joint venture concern eligible under the WOSB Program.* The offeror represents as part of its offer that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR

part 127. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The offeror represents as part of its offer that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127.

[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]

\* \* \* \* \*

13. Amend section 52.219-28 by revising the date of the clause and paragraphs (h) (4) and (5) to read as follows:

**52.219-28 Post-Award Small Business Program**

**Rerepresentation.**

\* \* \* \* \*

POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (**DATE**)

\* \* \* \* \*

(h) \* \* \*

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127. [The Contractor shall enter the name or names of the WOSB concern eligible under

*the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]*

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127. [*The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.*]

\* \* \* \* \*

14. Amend section 52.219-29 by:

- a. Revising the date of the clause;
- b. Revising paragraphs (a) and (c);
- d. In paragraph (d), remove "Joint Venture" and add "Joint venture" in its place.

The revisions read as follows:

**52.219-29 Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.**

\* \* \* \* \*

NOTICE OF SET-ASIDE FOR, OR SOLE-SOURCE AWARD TO, ECONOMICALLY

DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS (**DATE**)

(a) *Definition.* Economically disadvantaged women-owned small business (EDWOSB) concern, as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the



management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and is certified pursuant to 13 CFR 127.300 as an EDWOSB. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

\* \* \* \* \*

(c) *General.* (1) For EDWOSB set-aside procurements, offers are solicited only from certified EDWOSB concerns or EDWOSB concerns with a pending certification application in the Dynamic Small Business Search (DSBS).

(2) For EDWOSB sole-source awards, offers are solicited only from certified EDWOSB concerns.

(3) Offers received from other concerns will not be considered.

(4) Any award resulting from this solicitation will be made to a certified EDWOSB concern.

\* \* \* \* \*

15. Amend section 52.219-30 by:

- a. Revising the date of the clause;
- b. Revising paragraphs (a) and (c);
- d. In paragraph (d), remove "*Joint Venture*" and add "*Joint venture*" in its place.

The revisions read as follows:

**52.219-30 Notice of Set-Aside for, or Sole-Source Award to,  
Women-Owned Small Business Concerns Eligible Under the  
Women-Owned Small Business Program.**

\* \* \* \*

NOTICE OF SET-ASIDE FOR, OR SOLE-SOURCE AWARD TO, WOMEN-OWNED SMALL  
BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM

**(DATE)**

(a) *Definition.* *Women-owned small business (WOSB)*  
*concern eligible under the WOSB Program* (in accordance with  
13 CFR part 127), as used in this clause, means a small  
business concern that is at least 51 percent directly and  
unconditionally owned by, and the management and daily  
business operations of which are controlled by, one or more  
women who are citizens of the United States, and the  
concern is certified by SBA or an approved third-party  
certifier in accordance with 13 CFR 127.300 as a WOSB. A  
certified EDWOSB is automatically eligible as a certified  
WOSB.

\* \* \* \*

(c) *General.* (1) For WOSB set-aside procurements,  
offers are solicited only from certified WOSB concerns  
eligible under the WOSB Program or WOSB concerns with a  
pending certification application status in the Dynamic  
Small Business Search (DSBS).

(2) For WOSB sole-source awards, offers are  
solicited only from certified WOSB concerns.

(3) Offers received from other concerns shall not be considered.

(4) Any award resulting from this solicitation will be made to a certified WOSB concern eligible under the WOSB Program.

\* \* \* \* \*

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